THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 5794 of 1997

Between:

The Mandal Parishad Development Officer Mallial Mandal, Karimnagar District.

..... PETITIONER

AND

1 The Chairman-Cum-Presiding Officer, Industrial Tribal cum Labour Court, Godavarikhani, Karimnagar District.
2 Mohd.Abdul Kaleem, S/o. Mohd.Abdul Raheem,
R/o. Kapuwada, Jagtial, Karimnagar District.

.....RESPONDENTS

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O R D E R:

This petition is filed for setting aside the Award in ID No. 174 of 1993 on the file of the Labour Court, Godavarikhani.

The contention of the learned standing counsel for the Panchayat Raj Department, is that due to some unavoidable reasons, the person manning the post of the Mandal Parishad Development Officer (the petitioner) at the relevant point of time, could not attend the Court, resulting in an ex-parte order and so an opportunity may be given to the petitioner to contest the case, because the 2nd respondent who filed the I.D., before the 1st respondent did not, in fact, work for more than 240 days in a calendar year.

The contention of the learned counsel for the 2nd respondent is that since the petitioner was served with notice and willfully failed to appear before the Tribunal, the Tribunal after recording the evidence of witnesses passed the award and so there are no grounds to set aside the award.

I have sent for the record from the 1st respondent. The proceedings sheet shows that the I.D., was filed against the Mandal Development Officer, and Block Development Officer and that on 25-1-1995, to which day the case was posted both the respondents therein through their LOs have filed memo on 23.2.1995 and thereafter it underwent several adjournments. From 13.2.1995 the case was adjourned to 27.3.1995 on payment of Rs.50/- on costs by the respondents therein. On 27.3.1995 since the both the respondents therein and the AGP were absent and as costs ordered were not paid, respondents therein were set ex-parte and the case was posted for the evidence of the petitioner i.e. 2nd respondent herein. Subsequently the evidence of the petitioner therein was recorded. Therefore, it is clear that writ petitioner is guilty of laches and negligence in prosecuting the ID.

Since the relevant portion in award passed by the 1st respondent reads:

> "In this case the respondents set ex-parte on 27-03-1995 and no steps taken to set ex-parte order passed on 27-03-1995.
>
> In the above circumstances, Award is passed as prayed for and that the petitioner has proved his claim for re-instatement into service with all benefits in the circumstances without costs."

It is clear that the 1st respondent did not consider the evidence on record and exercise his discretionary jurisdiction, as he was under an impression that the petitioner before him is entitled to the relief sought merely because respondents before him failed to appear before him. Even in cases where the opposite party does not appear Tribunals and Courts have to consider the case on their merit, and relief should not be granted merely because the opposite side failed to appear. In view of the laconic order of the 1st respondent and since petitioner is seeking an opportunity to file a counter and contest the case, subject to payment of heavy costs by the incumbent of the office of the petitioner at the time of passing of the award for his laches an indifference to court proceedings, petitioner can be granted the relief

sought.

On condition of payment of Rs.5,000/- as costs to the 2nd respondent by the incumbent of the office of the petitioner at the time of passing of the award impugned, within 15 days from today, the petition stands allowed and the ex-parte award dated 16.12.1995 in ID No.174 of 1993 on the file of 1st respondent would stand set aside. In default, the petition stands dismissed.

It is made clear that petitioner also can make the payment of costs awarded and recover the said amount from the then incumbent of the office of the petitioner at the time of the award dated 16.12.1995. Petition is ordered accordingly. No costs.

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23-12-2005

Note: CC in three days

B/o Mjl.

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